BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Wednesday the 26th day of October 2022

CORAM : Mr.Justice M.Duraiswamy, Chairperson
Ms. Leena Nair, Administrative Member
Mr.R.Padmanabhan, Judicial Member

Appeal Nos.45 to 54 of 2022

M/s. Sri Narayana Foundations
(Real agencies)
Represented by N.Sivarajan

... Appellant in A.Nos. 45 to 54 of 2022

-Vs-

M.Sakthivel	... Respondent in A.No.45/2022
G.Raju	... Respondent in A.No.46/2022
R.Ganesan	... Respondent in A.No.47/2022
S.Ramar	... Respondent in A.No.48/2022
V.Devendran	... Respondent in A.No.49/2022
D.Amutha Thulasi	... Respondent in A.No.50/2022
M.Malarkodi	... Respondent in A.No.51/2022
V.Manokaran	... Respondent in A.No.52/2022
R.Sujatha	... Respondent in A.No.53/2022
V.Murali Dharan	... Respondent in A.No.54/2022

These appeals were filed U/s 44(1) of the Real Estate (Regulation and Development) Act 2016, taken on file on 30.09.2022 and came up for admission on 17.10.2022 in the presence M/s.S.Senthilnathan & V.Kirubalani, Counsels for

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the Appellant. Having heard the arguments on the side of the appellant and having stood over for consideration till this date, this Tribunal delivered the following:

COMMON ORDER

The promoter who suffered by the common order passed by the TNRERA in C.Nos.200 , 239, 240, 241, 261, 269, 273, 282, 287, and 288 of 2021 dated 27.04.2022 have preferred these appeals.

1. It is the case of the appellant that the appellant agency developed a real estate project at Sepakkam village, Virudhachalam Taluk, Cuddalore District. The name of the project is Sri Narayanapuram II. The project land was developed into various residential plots. Various Hindu Temples are also proposed to be constructed in the layout. The appellant obtained necessary approval from the local village panchayat. No DTCP approval was obtained. The cost of each plot measuring 1200 sq. ft. was fixed at Rs.54,000/-. In order to ease the financial burden of the buyers he introduced an equated monthly payment scheme. As per this scheme an intending buyer has to pay Rs.2000/- per month for 27 months. At the first payment the plots will be allotted and at end of the 27th month, the plot will be sold to the subscriber by means of registered sale deed at the costs of the buyer.

2. The said project was commenced in the year 2010. The appellant carried out wide publicity about the scheme through news papers and by distributing hand bills. About 1000 subscribers joined in the scheme and booked their plots. Some of them have booked more than one plot. Likewise, the

respondents herein became subscribers and booked their plots during the year 2010 and paid all the installments by the year 2012. Later during 2016 the Government of Tamil Nadu made it compulsory that the approval from DTCP to be obtained. The appellant suffered heavy loss as the whole layout has to be rearranged due to the increase in the width of the road and allocation of common area. The appellant requested the purchasers to share the loss suffered by him. Refusing to share the loss the respondents preferred separate complaints before TNRERA. Since the project was commenced and closed long before the introduction of the Real Estate (Regulation and Development) Act, 2016, all the complaints are not maintainable.

3. On the other hand it is the common case of the respondents, as found from the averments in the complaint and rejoinders, that believing the words of the appellant they become subscribers to the scheme with intention to purchase plots, during July 2010 and paid the monthly installments of RS.2000/- for 27 months without any default. The appellant had not even possessed sufficient extent of land at the time of the commencement of the scheme. The appellant had started purchasing lands subsequently with the help of the huge subscription amounts collected from the subscribers. Therefore the appellant was not in a position to execute sale deeds in favour of the subscribers immediately at the end of 27 months, as promised by him. The appellant was dodging and delaying the registration of plots by saying one reason or the other.

4. In fact the appellant not even formed the layout on ground as per the layout copy furnished to the respondents. As all the subscribers insisted for

registration of sale deed the appellant, left with no other option, had obtained the DTCP approval in the year 2019. After getting such DTCP approval the appellant started demanding further payment of Rs.90,000/- from each subscribers citing the loss incurred by him in getting the DTCP approval. The appellant had collected several crores of amount from thousands of subscribers and was holding the amount so collected for more than 10 years since 2010 onwards. Getting the necessary previous approval from the competent Planning Authorities and the concerned Local Body is the lawful obligation of the promoter. Demanding further payment of Rs.90,000/- from each subscriber by the appellant against his own promise is nothing but cheating the subscribers.

5. After hearing both sides the TNRERA has passed a common order dated 27.04.2022 and issued directions against the appellant. The present appeals were directed against the said common order.

6. All the appeals were posted for admission on 17.10.2022. Heard the Counsel for the appellants in detail. The question that arose for our consideration is, Whether these appeals are fit for admission?

7. The entire Complaint case files which are submitted before the TNRERA, have been send for and perused carefully. According to the respondents the DTCP approval was obtained by the appellant in the year 2019. It is also the case of the respondents that after getting such DTCP approval the appellant started demanding further payment of Rs.90,000/- from each subscribers citing the loss incurred by him for getting the DTCP approval. The appellant no were specifically denied this specific allegation of the respondents.

On the other hand the appellant had tacitly admitted the allegation in his grounds of appeal and counter affidavit. Be that as it may.

8. Even if the layout project is not approved / regularized till date by the competent Planning Authorities and the concerned Local body, the project requires to be registered. On either way it is very clear that as on 01.05.2017, the date on which section 3 of the Real Estate (Regulation and Development), Act, 2016 was came into force, this lay out was not approved /regularized by the competent Planning Authorities and the concerned Local body. The real estate project do not fall within the exempted categories under Rule 2(h) of the Tamil Nadu Real Estate (Regulation and Development), Rules 2017. Therefore, the finding of TNRERA in this regard is perfectly correct.

9. The contention of the learned Counsel for the appellant that the appellant was not involved in marketing, advertising, selling activities after 2012 cannot be accepted. Because the appellant is actively involved in selling activities till date by bargaining with the purchasers to make additional payment of Rs.90,000/- each.

10. According to the Town and Country Planning Act, no residential layouts can be formed and sold without the previous Planning Permission from the DTCP at the district level. The appellant cannot go back from his promise and insist any additional payment for executing and registering the sale deed in favour of the respondents, who had honestly believed the promises of the appellant and paid their hard earned money before 10 years to the appellant. The appellant is clearly estopped from contending otherwise. The TNRERA has passed the impugned order and issued the necessary directions to the appellant

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after considering all the facts and circumstances of this case. The appellant have filed these appeals with a view to further enrich himself by adopting delaying tactics. The filing of these appeals is nothing but a clear abuse of process of law. Therefore there is no merit in the appeals and deserves to be dismissed at the admission stage itself.

11. In the result all the appeals are hereby dismissed at the admission stage itself. The appellant is hereby strictly directed to comply with all the directions issued by the TNRERA before the due dates mentioned there in.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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